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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/802,817   | 03/18/2004  | Richard T. Ryan      | DWE/RYAN            | 5898             |
| 32834  | 7590        | 06/14/2006           | EXAMINER            |                  |
| D.W. EGGINIS<br>18 DOWNSVIEW DRIVE<br>BARRIE, ON L4M 4P8<br>CANADA |             |                      | HUYNH, KHOA D       |                  |
|  |             | ART UNIT             | PAPER NUMBER        | 3751             |

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                           |                     |  |
|------------------------------|---------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b>    | <b>Applicant(s)</b> |  |
|                              | 10/802,817                | RYAN, RICHARD T.    |  |
|                              | Examiner<br>Khoa D. Huynh | Art Unit<br>3751    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 3/28/06, 3/1/06 & 2/23/06.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-11 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 18 June 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the water access fixture, at least one water discharge aperture, a predetermined frontal area, the discharge frontal area, the light assembly portion and the housing as recited in claim 1; the electrical access conduit extending along a portion of the length of the fixture as recited in claim 3; the water access fixture, the externally threaded pipe portion, the locking nut, the light assembly portion and the housing as recited in claim 7; the attachment means as recited in claim 8; the free length of the power cord as recited in claim 10 as described in the specification, especially the Detailed Description of the Invention section. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application

must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The specification, especially the Detailed Description of the Invention, is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

the water access fixture, at least one water discharge aperture, a predetermined frontal area, the discharge frontal area, the light assembly portion and the housing as recited in claim 1;

the electrical access conduit extending along a portion of the length of the fixture as recited in claim 3;

the water access fixture, the externally threaded pipe portion, the locking nut, the light assembly portion and the housing as recited in claim 7;

the attachment means as recited in claim 8;

the free length of the power cord as recited in claim 10.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said discharge frontal area" in line 6. There is insufficient antecedent basis for this limitation in the claim and therefore, renders the claim indefinite. Claims 2-6 depend on claim 1 and are likewise indefinite.

Claim 4 recites the limitation "said light assembly housing" in line 1. There is insufficient antecedent basis for this limitation in the claim. Also, claim 4 calls for "the light assembly housing is a shallow depth, having a diameter/depth ratio greater than two". Such claim subject matter, however, was not described in details to allow the scope of the claim to be ascertained. In other words, it is unclear what is the meaning of "having a diameter/depth ratio greater than two". Even though, applicant, in the remarks section (page 5), indicates that "the depth to diameter ratio is at total variance with other prior art arrangement and...since the attached light housing sits against the surface of the pool wall...it is highly desirable to make the housing as streamlined and slender as possible, to minimize its protrusion from the pool wall"; nevertheless, such remarks still do not explain the meaning of "having a diameter/depth ratio greater than two" as recited in claim 4. Does applicant mean greater than two inches of protrusion or retraction (set in) from the surface of the wall? Such ambiguity makes it difficult in ascertaining the scope of the invention as claimed.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3, 6, 7 and 11 (as presently understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Vajda et al. (5207499).

Regarding claims 1 and 6, the Vajda et al. reference discloses a lighting apparatus for a pool having a water circulation system. The apparatus includes a water access fixture (at 5, 90, 95 in Fig. 1) for installation through an aperture in a wall of the pool (Fig. 1). The access fixture, as schematically shown in Fig. 4, includes at least one water discharge aperture (constituted by the aperture when water 204 is discharged) encompassing a predetermined frontal area. The access fixture also includes a light assembly portion (at 10) integrally connected in adjacent relation with and located externally of the discharge aperture encompassing the frontal area (Fig. 4). The lighting assembly portion includes a housing (about 30) with a translucent cover (40). A power supply means (about 75) connecting with the light assembly portion and extending through the access fixture for connection to an externally located low-voltage power source.

Regarding claim 3, the water access fixture includes an electrical access conduit (80,60) extending along a portion of the length of the fixture.

Regarding claim 7, the Vajda et al. reference discloses a lighting apparatus for a pool having a water circulation system. The apparatus includes a water access fixture (at 5, 90, 95 in Fig. 1) for installation through an aperture in a wall of the pool (Fig. 1). The apparatus includes an externally threaded pipe portion (at 90, 95) with a locking nut (at 20) in threaded engagement thereon for securing the access fixture to the pool. The access fixture includes a light assembly portion (at 10) integrally connected in adjacent relation with the access fixture. The lighting assembly portion includes a housing (about 30) with a translucent cover (40). A power supply means (about 75) connecting with the light assembly portion and extending through the access fixture for connection to an externally located low-voltage power source.

Regarding claim 11, as schematically shown in Figure 1, the integrally connected water access fixture portion and the light assembly portion having a smooth, outwardly convex outer surface in use to afford flush fitting relation with the interior of the pool.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2, 4, 5 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vajda et al. (as discussed supra) in view of Ruthenberg (6184628).

Regarding claims 2 and 5, the Vajda et al. reference DIFFERS in that it does not specifically include a substantially planar array of LEDs as claimed. Attention, however, is directed to the Ruthenberg reference which discloses another lighting apparatus for use in a pool. The lighting apparatus includes a multicolor (red, green and blue), planar array of LEDs (10) with a stem portion (30) adapted to engage a conventional lamp socket (34). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Vajda et al. reference by employing a multicolor, planar array of LEDs, in view of the teaching of Ruthenberg, to provide a light source that (a) produces less heat than an incandescent light bulb, (b) is last longer than an incandescent light bulb and (c) is capable of producing various light effects.

Regarding claim 4, even though the Vajda et al. reference does not specifically disclose that the housing having a diameter/depth greater than two as claimed, it, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to have employ such ratio for the diameter/depth of the housing since discovering an optimum value for a ratio of a diameter/depth of the housing as a result effective variable involves only routine skill in the art, especially since the Vajda et al. reference shows, in Figure 1, that the light assembly portion housing is as streamlined and slender as possible to minimize its protrusion from the pool wall.

Regarding claim 8, the Vajda et al. reference DIFFERS in that it does not specifically include a plurality of LEDs as claimed. Attention, however, is directed to the Ruthenberg reference which discloses another lighting apparatus for use in a pool. The lighting apparatus includes a multicolor (red, green and blue), planar array of LEDs (10) with a stem portion (30) adapted to engage a conventional lamp socket (34). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Vajda et al. reference by employing a multicolor, planar array of LEDs, in view of the teaching of Ruthenberg, to provide a light source that (a) produces less heat than an incandescent light bulb, (b) is last longer than an incandescent light bulb and (c) is capable of producing various light effects. The Ruthenberg reference also discloses attachment means (32,60,62) securing the LED array in releasably secured relation with the light assembly housing.

Regarding claim 9, the attachment means, as disclosed by Ruthenberg, further includes a rib (60) and detent (32) in mutually engaging relation located diametrically opposite a removable screw (62) securing the LEDs array to the housing.

Regarding claim 10, the power supply means (about 75 in Vajda et al.) including a power supply cord including a free length (the cord extending from the element 70 to element 75) connecting the light assembly with the external power source.

***Response to Amendment***

9. Applicant's amendment, filed on 03/28/06, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

***Response to Arguments***

10. Applicant's arguments filed on 02/23/06 with respect to the pending claims have been fully considered. However, such arguments are deemed not persuasive.

Applicant asserts that the prior art reference does not teach a pool lighting system having "at least one water discharge aperture encompassing a predetermined frontal area" as claimed in the amended claims. See remarks section, page 4-5. The examiner disagrees.

As stated in the above rejection, the Vajda et al. reference does disclose a lighting apparatus for a pool having a water circulation system including a water access fixture for installation through an aperture in a wall of the pool (Fig. 1). The access fixture, as schematically shown in Fig. 4, includes at least one water discharge aperture encompassing a predetermined frontal area and a light assembly portion integrally connected in adjacent relation with and located externally of the discharge aperture encompassing the frontal area (Fig. 4). Therefore, the Vajda et al. reference does teach applicant's invention as claimed.

Furthermore, applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without

specifically pointing out how the language of the claims patentably distinguishes them from the references.

Regarding the Declaration filed on 02/23/06, the discussion of the Declaration is acknowledged. Even though applicant, in the discussion, provides some structural limitations of his alleged “unique invention” as disclosed, the claims remain rejected over the cited prior art since applicant did not provide any of the discussed limitations in the claims that patentably distinguishes them from the prior art. It is noted that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### **Conclusion**

11. Applicant's amendment necessitated the revised grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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